

REMARKS

In response to the Final Rejection mailed on August 24, 2007, Applicants submit this RCE and respectfully request reconsideration.

Claims 1-44 are now pending in this Application. In this Amendment, claim(s) 1 and 23 have been amended and claim(s) 20-22 and 37-40 have been canceled and claims 45-51 have been added.

Claims 1, 23 and 45 are independent claims and the remaining claims are dependent claims. Applicant(s) believe that the claim(s) as presented are in condition for allowance. A notice to this affect is respectfully requested.

Claim 1-44 have been rejected under **35 U.S.C. §103** as being obvious over Moran, U.S. Patent No. 6,801,940 (hereinafter Moran '940) in view of Kekic, U.S. Patent No. 6,664,978 (hereinafter Kekic '978). In particular, claims 1 and 23 have been rejected on the suggestion that Kekic '978 teaches the claimed feature of receiving SNMP-attribute data from a monitored device across a public wide area network at repeated regular time intervals.

The Kekic reference discloses active monitoring and control of a target host (col. 7:19-53). Such active control includes executing commands and changing the state of the host (7:51-52). In contrast, the present application teaches a monitoring system that passively monitors and reports on a device being monitored in a read-only manner without intrusively affecting or changing the state of the device (21:13-18).

The present disclosure differs from Kekic '978 because the claimed system passively polls the computing devices under test, thus avoiding the invasive control actions and commands which force state changes in the managed device, as disclosed in Kekic '978 at col. 7, lines 19-40. In contrast, the claimed system merely monitors and accumulates SNMP utilization data without changing the state of or issuing commands to the device under test. Accordingly, claim 1 has been herein amended to recite accumulating utilization information from the SNMP attribute data, accumulating utilization information

occurring in a read-only manner from the device being monitored, as disclosed at page 20, lines 17-22 of the specification as filed.

Applicant submits that claim 1 is allowable because the claimed feature of accumulating utilization information in a read-only manner is not shown, taught, or disclosed, alone or in combination, by Moran '885 or Kekic '978. Further, one of ordinary skill in the art would not look to Kekic to modify Moran because Kekic manages client/server nodes across an entire network while Moran is concerned with filtering data from a particular source. Thus, the distributed control effected by Kekic and applicable to machines (i.e. network elements) would be inoperable to the data flows between machines of Moran '885. Further, to attempt such a combination would still not yield the claimed invention because of the non-intrusive nature of the read-only manner just discussed. Claim 23, rejected on similar grounds, has been likewise amended.

Further, claims 45-51 have been added to recite particular features of Applicant's claimed invention distinguishable over the prior art including the amended features discussed above. Specifically, claim 45 recites:

- Identifying at least one computing device under test, the computing device under test providing a service via a network, as disclosed in the specification at page 11, lines 8-10;
- Generating a script having a set of commands, the set of commands defining a test indicative of availability of a service, as discussed at page 18, lines 8-24;
- Retrieving network gateway information, the network gateway information indicative of the computing device under test and operative to enable connectivity between the tester and the computing device under test and being monitored by the test, taught at page 19:15- page 20:22;

-11-

-Accumulating circuit utilization metrics (14:22-25) via the retrieved network gateway information, the circuit utilization metrics having utilization information of the service, such that accumulating utilization information occurs in a read-only manner from the device being monitored, shown at page 20:17-22;

- Iteratively testing, using the defined tests, utilization of internet circuits for providing the services, at 12:7-17;

- Selectively identifying availability of the services provided by the devices being monitored, discussed at 21:13-18;

- Aggregating the utilization information indicative of service availability Information, disclosed at 12:7-12.

Claim 46 teaches the further step of alerting a user to the unavailability of a service, as discussed at page 22:5-12.

Claim 47 describes the feature of querying, via remote login, the availability information, in which the availability information is indicative of service availability and reported in a consistent granularity that does not degrade with time, as discussed at page 14:20-21. As indicated in the prior art of record, conventional systems compress older data, reducing the maximum resolution of a query after a predetermined amount of time (i.e. after a week, results only available on a per hour basis, etc.).

Claim 48 has been added to clarify the feature of accumulating circuit utilization metrics includes gathering service availability information by accessing the device being monitored via a virtual private network (VPN), further including

-12-

selectively identifying whether at least one of VPN access or SNMP access methods are employed, as discussed at pages 25:23-26:6.

Claim 49 has been added to recite that gathering utilization information includes performing periodic health checks, the periodic health checks including device specific tests on available services, as discussed at 24:13-19.

Claim 50 has been added to recite that gathering utilization information includes establishing polling queues for each of a plurality of information types for which information is to be gathered, and executing a polling thread for each of the information types, each of the polling threads retrieving statistical information for a corresponding one of the information types, as discussed from pages 23:22-25:18.

Claim 51 has been added to clarify that the tests include at least one of FTP, HTTP, SMTP and ping (18:16-19:14), and that testing further comprises a selection from among ping and SMTP testing, as discussed at page 19:1-10.

As the remaining claims depend from, either directly or indirectly, claims 1, 23 and 45, it is respectfully submitted that all claims are in condition for allowance.

Applicant(s) hereby petition(s) for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

-13-

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,

/CJL/

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